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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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In the Matter of)
)
Carriage of the Transmissions)
of Digital Television Broadcast) CS Docket No. 98-120
Stations)
)
Amendments to Part 76)
of the Commission's Rules)

To: The Commission

COMMENTS OF ARMSTRONG HOLDINGS, INC. AND
INTER MOUNTAIN CABLE, INC.

Stephen R. Ross
James A. Stenger
Amy L. Brett

ROSS & HARDIES
888 16th Street, N.W.
Suite 400
Washington, D.C. 20006
(202) 296-8600

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Their Counsel

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SUMMARY

Armstrong Holdings, Inc. and Inter Mountain Cable, Inc. respectfully submit their comments in response to the Commission's *Notice of Proposed Rulemaking* (NPRM). Armstrong and Inter Mountain believe that the instant proceeding is premature until the Commission engages in a substantial dialogue with the industry to understand the ramifications of any digital must carry proposal. More specifically, Armstrong and Inter Mountain support Option 7 and oppose the imposition of a digital must carry requirement upon cable operators during the transition period.

Armstrong and Inter Mountain respectfully submit that the Commission lacks statutory authority to impose new must carry requirements upon cable operators other than a requirement that when a broadcaster turns in its analog channel, the broadcaster's must carry rights will migrate to its digital signal only. Any broader interpretation of the statute impermissibly would impinge upon Armstrong and Inter Mountain's First Amendment rights under established case law, as the requisite justification for such governmental action has not been and cannot be developed with respect to dual analog and digital must carry.

Armstrong and Inter Mountain also respectfully submit that current retransmission consent rights do not allow broadcasters to require cable operators to carry digital signals as a pre-

condition of carriage of analog signals. The Commission should take steps to ensure this does not happen in the October 1999 election.

Armstrong and Inter Mountain understand the Commission's interest in soliciting the cooperation of cable operators, so that the transition to digital television and the return and subsequent auction of analog spectrum is not delayed beyond the current target date of 2006. However, Armstrong and Inter Mountain submit that the Commission's goal would be harmed rather than helped by the imposition of mandatory dual carriage, and that the Commission should not supplant the natural marketplace forces and technological developments with a new set of complex federal regulations.

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Armstrong Holdings, Inc. ("Armstrong"), and its affiliated entities, hereby submits its comments in the above-captioned proceedings.^{1/} Armstrong is a closely-held, family-owned business that has operated cable television systems since 1963. Currently, Armstrong serves approximately 192,000 subscribers in 209 cable television franchise areas located in Pennsylvania, Ohio, West Virginia, Maryland, and Kentucky. Armstrong's cable subscribers receive between 36 and 42 channels of programming delivered via state-of-the-art technology which, for the most part, Armstrong has internally financed, constructed, and continually upgraded over a period of thirty years.

Inter Mountain Cable, Inc. is a small, independent cable company which was founded in 1965 offered five local broadcast

¹⁷ Carriage of the Transmissions of Digital Television Broadcast Stations, Notice of Proposed Rulemaking, CS Docket No. 98-120, (rel. July 10, 1998) ("NPRM").

stations to 22 subscribers. Today, through use of an extensive microwave technology and the acquisition of small cable systems, Inter Mountain provides service to just under 25,000 subscribers in eight largely rural counties in Kentucky, West Virginia, and Virginia. Inter Mountain offers its subscribers basic cable service, cable programming service tiers and two premium channels for a total capacity of 36 channels.

I. Summary of the Notice of Proposed Rulemaking

In the NPRM, the Commission seeks comment on proposals to require cable operators, as part of their "must carry" obligations, to carry both the analog and digital signals of television broadcast stations during the transition period from analog to digital broadcasting. As the Commission recognizes, the impending conversion from analog to digital signals by television broadcast stations presents a unique situation in the application of the congressionally-mandated must carry rules.^{2/} In the period between the commencement of digital service^{3/} and December 31, 2006 (at which time they currently are required to return their analog 6 MHz channel to the Commission),^{4/}

^{2/} 47 U.S.C. §§534, 535; 47 C.F.R. §76.56.

^{3/} At least 41 stations intend to begin digital broadcasts in November, according to the Chairman's recent Statement on Digital Television Transition. See *FCC News*, rel. October 6, 1998.

^{4/} Broadcasters may retain both channels and continue analog broadcasting beyond 2006 in the event that penetration of digital receivers and/or converters takes longer than projected, raising

broadcasters simultaneously may broadcast both analog and digital signals, thus substantially increasing the overall number of channels to be broadcast over the airwaves. Were cable operators required to carry both the analog and digital signals of broadcasters, the Commission fundamentally would alter the content of cablecasting and seriously impact multichannel video programming distributors ("MVPD's"), video programming vendors ("VPV's"), regulators and consumers. A government-mandated alteration of cablecasting content of this magnitude is unprecedented, even by the standards of current analog must carry regulations.

In considering the appropriate must carry regime for the analog-to-digital transition period, the Commission proposes seven possible options, six of which require cable systems to carry at least some digital broadcast signals during the transition period.^{5/} The Commission's Option 7 proposes adoption of no digital carriage requirements during the transition

the specter that the Commission's actions herein may have an impact beyond 2006. See 47 U.S.C. §309(j)(14)(B).

^{5/} NPRM at ¶¶39-51. The NPRM forthrightly recognizes that "[t]o the extent that the Commission imposes a digital must carry requirement, cable operators could be required to carry double the amount of television stations, that will eventually carry identical content, while having to drop various and varied cable programming services where channel capacity is limited." Id at ¶39.

period.^{6/} Armstrong and Inter Mountain respectfully submit that Option 7 is the only option consistent with the Communications Act, as any broader interpretation of the Act impermissibly would infringe on cable operators' First Amendment rights.^{7/}

The NPRM also seeks comment on the issues surrounding interoperability between the digital formats chosen by broadcasters to transmit digital signals to over-the-air receivers and by cable operators to retransmit their digital signals to subscribers.^{8/} The Commission recognizes that the complex problems related to cable set-top boxes' ability to pass through HDTV and DTV signals, to decompress (or compress if necessary) multiplex signals, and to otherwise process such signals would have to be resolved before any digital must carry obligations could be imposed.^{9/} The Commission also recognizes that many of its other rules are either inconsistent with a digital must carry requirement, such as the non-duplication rule

^{6/} Id at ¶50.

^{7/} The Commission recognizes (as it must) that the first six digital must carry proposals raise grave constitutional and statutory concerns which must be addressed prior to implementing any rules. Id at ¶¶15-16.

^{8/} Id at ¶22. Broadcasters plan to transmit digital signals using either 8 or 16 vestigial sideband modulation (VSB). The cable industry however, chose to use either 64 or 256 quadrature amplitude modulation (QAM) which allows for greater operating efficiency, higher data rate and requires less error correction.

^{9/} Id at ¶¶25-31.

and the primary signal rule^{10/}, or cannot be applied to digital must carry without substantial clarification or revision, such as channel capacity, station eligibility for must carry, material degradation, tier and channel position, and the effect digital must carry would have on small cable systems.^{11/} Given the complexity of these issues, Armstrong and Inter Mountain believe that mandated carriage of digital signals is premature at this time.

II. It is Premature for the Commission to Adopt Digital Must Carry Requirements

Armstrong and Inter Mountain believe that the transition period should be used to allow market based solutions to the complex issues raised in the NPRM. Rather than seeking to write rules in an adversarial notice and comment proceeding, the Commission should establish a substantial and open dialogue with broadcasters, cable operators, engineers and consumers in order to understand and observe the evolving marketplace with respect to digital technology. The imposition of digital must carry rules would be antithetical to the video programming and distribution markets until all participants may better understand when and what type of equipment will be available, how much it will cost, and what percentage of consumers have any interest in

^{10/} Id at ¶¶69, 71.

^{11/} Id at ¶¶55, 58, 62, 75, 78.

buying digital receivers. Only then could the Commission have the statistical data and economic information to consider whether digital must carry rules are necessary and appropriate, and could be crafted in a manner that is constitutionally and statutorily permissible.

The Commission's first priority in this matter should be to afford parties time to negotiate with each other for voluntary carriage, which would allow for an accurate gauge of consumer demand for digital programming. The Commission should take steps to ensure that these negotiations are conducted without undue advantage being conferred by the retransmission consent rules.^{12/} Apart from monitoring the upcoming retransmission consent elections, the Commission's only other role at this time should be to foster interoperability standards and perhaps encourage funding for advanced systems research.^{13/}

^{12/} Armstrong and Inter Mountain believe that the Commission needs to pay close attention to the upcoming must carry election. Broadcasters may try to use retransmission consent to force cable operators to carry their DTV channels for the right to carry their analog channels, giving broadcasters unprecedented leverage. The Commission hints at this issue in the NPRM, however because of the possible abuse of the retransmission consent policy, the matter needs to be fully explored in the record and Commission action taken in this proceeding. See Id at ¶32.

^{13/} From a technical standpoint, the Commission should concentrate on facilitating the adoption of an industry compatible interface. Without a compatible interface, it is meaningless for the Commission to adopt an implementation schedule or any must carry requirements.

An attempt to implement digital must carry regulations prematurely could inhibit, rather than promote, the early adoption of digital technology and the return of the analog spectrum. For example, if cable subscribers believe they do not need to purchase digital receivers or supplemental converters because cable operators will be required by the Commission to decode digital signals for reception on existing analog television sets, the market for analog television sets and off-air converters may be drastically reduced and economies of scale may not be achieved, resulting in slower adoption of digital technology and significant delay in return of the analog spectrum. The complexity of these issues indicates a dialog with industry is more appropriate at this time than an attempt to mandate cable carriage.

III. Digital Must Carry Rules Violate Cable Operators' First Amendment Rights

The first part of this section sets out the history of must carry, beginning with the Quincy and Century decisions, in which the D.C. Circuit Court twice struck down must carry holding the rules were unconstitutional. Then, the Turner I and Turner II decisions are discussed, where the D.C. District Court and ultimately the Supreme Court upheld the must carry rules as they stand today. We show that the Commission does not now have, nor will it create in this rulemaking the required record or rationale to adopt transitional digital must carry rules.

A. Case History of Must Carry

1. Quincy

In Quincy Cable TV, Inc. v. FCC,^{14/} the United States Court of Appeals for the District of Columbia Circuit Court struck down must carry finding the rules violate cable operators' First Amendment right to freely exercise editorial discretion in selecting the content of program service.^{15/}

The Court analyzed the constitutionality of the rules under the intermediate scrutiny test set forth in U.S. v. O'Brien.^{16/} Under O'Brien, a content neutral regulation will be sustained if it advances an important governmental interest unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further such interests.^{17/} The Court held the rules unconstitutional due to a lack of a record to show that must carry would "preserve free, locally-oriented television or that broadcasters would suffer any harm if cable systems did

^{14/} Quincy Cable TV, Inc. v. FCC, 768 F.2d 1434 (D.C. Cir. 1985) cert. denied 476 U.S. 1169 (1986).

^{15/} Id. at 1462-63. The case stems from TBS' 1980 petition requesting the Commission to institute a rulemaking to delete the must carry rules. In 1984, when the Commission denied its request, TBS filed a petition for review in the D.C. Circuit. Quincy, a cable operator in Quincy, Washington, challenged the Commission's issuance of a forfeiture against it for deleting two commercial broadcast stations, in violation of the must carry rules.

^{16/} 391 U.S. 367 (1968).

^{17/} Id.

not carry broadcast signals ."^{18/} Simply put, "the Commission has failed to put itself in a position to know whether the problem the rule seeks to cure- the destruction of free, local television- is a real or merely a fanciful threat."^{19/} The Court also held the rules to be over inclusive and indiscriminate by protecting every station, thus failing the second part of the O'Brien test.^{20/} When the Supreme Court denied *certiorari*, the Commission suspended the rules and began rulemaking proceedings to attempt to establish the requisite record.^{21/}

2. Century

After Quincy, the Commission received petitions from various broadcasters requesting that the Commission adopt new must carry rules.^{22/} This time, the Commission argued must carry was

^{18/} Quincy, 768 F.2d at 1454-55 (footnote omitted).

^{19/} Id. (citation omitted). Similarly, no one can tell at this point whether the success of digital broadcast television depends on mandatory cable carriage as the Commission suggests.

^{20/} Id. at 1459.

^{21/} Accordingly, how can the Commission precede now to review the digital must carry issue when virtually no one has a TV set capable of viewing digital programs.

^{22/} See Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems, 1 FCC Rcd 864 (1986), recon. denied, 2 FCC Rcd 3593 (1986) ("Report & Order"). In this proceeding, the Commission received 85 comments and 28 reply comments, in addition to letters from Congressman and other informal complaints. Id. at 867.

necessary to give consumers five years to adjust to using an A/B switch and proposed a sunset date of January 15, 1992.^{23/}

Century Communications and 13 other cable operators challenged the rules on several grounds, including violation of cable operators' First Amendment rights.^{24/} The D.C. Circuit again struck down the rules holding they were "unjustified" and "unduly sweeping."^{25/} The Court found the Commission failed to provide a sufficient record to substantiate a need for must carry.^{26/}

[The Commission] puts forth no additional surveys, or polls, suggesting the likely pace of consumer adaption to the A/B switch technology. Nor does [the Commission] offer analogies illustrating how swiftly consumers have incorporated previous electronic innovations."^{27/}

Based on lack of evidence, the Court also rejected the Commission's argument that in the absence of must carry rules, cable companies would drop local broadcasts.^{28/} As, in Quincy,

^{23/} Id at 886.

^{24/} Century, 835 F.2d at 297.

^{25/} Id.

^{26/} Id, at 300. ("The difficulty is that here, as in Quincy Cable TV, the Commission's judgment that transitional rules are needed is predicated not upon substantial evidence but rather upon several highly dubious assertions of the Commission, from which we conclude that the need for a new saga of must carry rules is more speculative than real.")

^{27/} Id.

^{28/} Id. at 835 303.

the Century court held the Commission had failed to satisfy its burden of proof to show the need for must carry outweighs cable operators' First Amendment rights.

In order to attempt to remedy the deficiencies found by Quincy, Congress in 1989 embarked on what would amount to over 18,000 pages of evidence from over three years of hearings, testimony and reports, resulting in the passage of the Cable Television Consumer Protection and Competition Act of 1992,^{29/} which among other things, contained new must carry requirements. For those hearings, Congress determined that without must carry cable operators would drop or reposition broadcast stations, causing broadcasters' advertising revenue to erode. Congress also determined that local broadcasting would be in jeopardy, threatening diversity of choice.^{30/}

3. Turner I and II

In Turner I,^{31/} the District Court upheld must carry rules holding that the congressional record supported must carry rules in order to "to promote fair competition among video speakers in order to assure the survival of local broadcasting for the benefit of both those who do subscribe to a cable service and for

^{29/} Pub. L. No. 102-385, 106 Stat. 1460, codified at 47 U.S.C. §521 et. seq.

^{30/} S. Rep. 92, 102d Cong., 1st Sess. 42 (1991).

^{31/} Turner Broadcasting System, Inc. v. FCC, 819 F. Sup. 32 (D.C. Cir.), vacated, 512 U.S. 622 (1994) ("Turner I").

those who do not."^{32/} The Court upheld the substantiality of broadcasting under intermediate scrutiny applicable to content-neutral regulations.

On appeal, the Supreme Court upheld two components of the District Court's decision: (1) must carry provisions are subject to intermediate scrutiny, and (2) the preservation of free broadcast television is a substantial governmental interest.^{33/} The Court remanded the case for further development of the factual record.^{34/}

On remand, the District Court upheld must carry,^{35/} giving deference to the findings in the congressional record:

This Court is not to reweigh the evidence de novo, or to replace Congress' factual prediction with its own. This Court's role is limited to assuring that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.^{36/}

The Court held that must carry imposed a modest burden on cable operators^{37/} because they were not forced to make

^{32/} Id at 45 (citation omitted).

^{33/} Id at 651, 663-64.

^{34/} Id at 666-67.

^{35/} Turner Broadcasting System, Inc. v. FCC, 910 F. Supp 734 (D.C. Cir. 1995), aff'd, 117 S. Ct. 1174 (1997) ("Turner II").

^{36/} Turner II, 910 F. Supp at 739 (citation omitted).

^{37/} Id.

substantial changes in programming lineup^{38/} or drop many cable programmers in order to make room for broadcast stations.^{39/}

On appeal, the Supreme Court upheld the lower court's decision, holding the congressional record analog must carry furthers important governmental interests and does not burden more speech than necessary:

Because the burden imposed by must carry is congruent to the benefits it affords, we conclude must carry is narrowly tailored to preserve a multiplicity of broadcast stations for the 40 percent of American households without cable.^{40/}

Unlike the analog must carry cases, the digital must carry proposal is not supported by any congressional hearings or findings.

B. Digital Must Carry Proposal

In the NPRM, the Commission offers three "statutory goals" in support of adopting digital must carry: (1) successful introduction of digital broadcast and subsequent recovery of the vacated broadcast spectrum; (2) retention of strength and competitiveness of broadcast television; and (3) a minimization of the disruption and costs to subscribers, cable operators and

^{38/} Id at 746.

^{39/} The Court cited statistics from the congressional hearings that cable operators have been able to satisfy their must carry obligations 87% of the time by devoting previously unused channel capacity to the carriage of local broadcasters.

^{40/} Id at 1199.

cable programmers while not inhibiting investment and innovation in technologies and services.^{41/}

Of these three goals, only the second is common to analog must carry. Therefore, it is apparent that the prior congressional and Commission records on analog must carry are insufficient to support digital must carry, especially dual carriage of analog and digital for a multi-year transitional period. Apart from simply stating these goals, the Commission offers no additional evidence to show that they are substantial or that digital must carry would further them. No data is available to show that these goals would not be achieved without transitional digital must carry rules. No evidence exists to show broadcasters would be harmed or digital broadcasting would not be successfully introduced without digital must carry. All of these questions must be answered affirmatively based on substantial evidence to pass constitutional scrutiny.

1. The Commission Has Not Established the Required Record to Show a Substantial Governmental Interest Exists

In order to meet its burden, the Commission must show actual harm to local broadcasting without cable carriage of dual broadcast signals during the transition period. Harm to local broadcasting must be real, not speculative. Specifically, based on the statutory goals in the NPRM, the record must show dual

^{41/} Id. at ¶1.

cable carriage during the transition period is essential to (1) the successful introduction of digital broadcasting, (2) the successful recovery and subsequent auction of analog spectrum; the retention of the strength and competitiveness of local broadcasting; and (4) to prevent disruption and cost to subscribers, cable operators, and cable programmers from prohibiting investment and innovation in new technologies.^{42/}

Neither the Commission nor anyone else at this point in time can provide support of these statements with concrete facts, statistics, economic reports, industry trends, or consumer research. Nor can the Commission rely on the analog must carry cases or record because the Century court held that any newly proposed must carry rules must be evaluated on their own terms based on a new record.^{43/}

Because digital broadcasting is in the very early stages, there is no available economic data or sense of consumer demand for the new technology.^{44/} Only after Congress undertook an immense fact finding mission which lasted over three years and amounted to "tens of thousands of pages" and after the lower

^{42/} NPRM at ¶1.

^{43/} Century, 835 F.2d at 299.

^{44/} See Id 835 F.2d at 300-01. The Century Court dismissed as substantial evidence the administrative record compiled during the Commission's rulemaking and an industry record entered into the record.

court continued building the record for an additional 18 months, did the Supreme Court find the government had sustained its burden.^{45/}

Only marketplace forces over time will show solid economic evidence as to what the availability and cost of digital equipment will be, what, when, and how the interoperability issues will be resolved, what consumer demand will be for digital programming, and what the additional costs will be to cable subscribers to receive digital signals. Evidence offered at this time is mere conjecture.^{46/} When digital equipment is made available in the retail market, consumer demand and the availability and cost of digital equipment will determine whether cable operators economically can offer digital programming during the transition period.^{47/}

^{45/} Turner II, 117 S. Ct. at 1185.

^{46/} For example, WBZ-TV, the CBS affiliate in Boston only recently signed a deal with an equipment manufacturer for antennas, transmission lines and combiners for DTV conversion. Broadcasting & Cable, Sept. 14, 1998, p.54.

^{47/} Digital television receivers have only begun to hit the marketplace. Zenith, one of the earliest pioneers of HDTV, introduced its first digital HDTV receivers as recently as January 1998, and plans to ship digital HDTV sets to retail outlets sometime in the Fall 1998. The digital receiver/decoder has a manufacturer's suggested list price of \$5,995. Zenith's is only now beginning to offer its HDTV front-projection monitor at a list price of \$12,600. Press Release, "Zenith Unveils First HDTV Receivers" January 8, 1998. Sony Electronics, another leader in the development of digital television technology, also plans to offer its first consumer digital television products starting in the Fall of 1998. Press Release, "Sony Showcases

2. Broadcasters May Retain Analog Signals Past 2006

Prior to marketplace factors unfolding, it is impossible to know how many broadcasters will retain their analog channels past the statutory return date. The Commission admits in the NPRM that return of spectrum is only "*in part dependent on the carriage of digital television stations by cable operators and other multichannel video programming distributions.*"^{48/} A broadcaster's ability to retain its analog channel beyond December 31, 2006 is dependent upon the state of the digital television marketplace and consumer demand for the new technology. Congress will allow broadcasters to retain analog channels past 2007 under certain marketplace conditions: (1) if at least one local commercial station affiliated with a major network is not broadcasting in digital and that station has satisfied the Commission's construction extension criteria, and (2) digital-to-analog converter technology is not generally available in the market. If neither (1) and (2) apply, then a showing can be made that 15% or more of the television households in the market do not subscribe to a cable system or other MVPD carrying one of the digital channels of each station broadcasting

Digital Entertainment Essentials at 1998 WCES" January 7, 1998. The price and availability of digital television receivers alone creates uncertainty to the success of digital television in the near future.

^{48/} NPRM at ¶12 (emphasis added).

in digital and they do not have either a digital receiver or converter.^{49/} The third aspect of this test only comes into play if the first two provision are not available.

Another reason broadcasters may retain analog channels past the end of the transition period is because of the simulcast requirements. Beginning April 1, 2003, broadcasters are required to simulcast at least 50% of the programming on their analog and digital channels, and by April 1, 2005, broadcasters are subject to a 100% simulcast requirement. Consumer demand may be low for a 100% simulcast channel, especially considering the potential for substantial additional charges cable operators would have to assess in order to provide the digital signals.

The justification for dual cable carriage of broadcast signals is analogous to the failed justification in Century, where the Commission claimed must carry rules were needed for a five year to give viewers time to adjust to a new technology, the A/B switch.^{50/} The D.C. Circuit disagreed, and held the Commission failed to substantiate a claim that must carry rules where needed to make such a transition.

The Commission's justification for digital must carry echos the language in its 1986 Report & Order:

^{49/} 47 U.S.C. §309(j)(14).

^{50/} Century, 835 F.2d at 296.

In order to achieve the long-term goal of maximizing program choices to all viewers, we need to preserve cable subscribers' access to broadcast programming and to ensure that broadcast television remains a competitive alternative source of programming during the transition to the new environment. The interim must carry rules will meet this objective by preventing Commission disruption of the flow of television services to the public during a five-year implementation period and by facilitating an orderly transition to a new market environment in which must carry regulation is no longer necessary because consumers have both the awareness and capability to use switching devices to alternate between cable and broadcast program sources.^{51/}

Those themes are very similar to the Commission's current defense of digital must carry based on the successful introduction of digital broadcast and subsequent recovery of the vacated broadcast spectrum. Now, as then, the Commission offers "scant evidence" to show that without must carry digital television is doomed.^{52/}

^{51/} Report and Order, 1 Rcd at 889-90 (emphasis added).

^{52/} Neither the Commission nor the industry can agree on whether digital television will be accepted by consumers. In a panel discussion before the annual convention of American Woman in Radio and Television, Commissioner Powell noted the uncertain atmosphere of digital's future: "The government's timetable for switching to digital television broadcasts is 'far too aggressive' and may cause consumers to reject the technology. . . . The government-mandated schedule for constructing digital TV stations will force broadcasters to spend billions before they have any inkling of what type of service consumers prefer technology may never recover if customers reject the industry's initial service. . . . If viewers reject the technology, broadcasters may never return their analog spectrum to the government." Broadcasting and Cable September 14, 1998 p. 14. As with everyone else, Commissioner Powell does not have a crystal ball to predict the future of digital TV.

3. The Commission Must Show the Asserted Interests are Substantial

Even if the Commission could prove actual harm to local broadcasting without dual carriage of the analog and digital signals during the transition period, the statutory goals must be must be substantial to override the cable operator's first amendment right to freely select the programming on its cable system.^{53/} The Commission's asserted interests for digital must carry differ considerably from the interests upheld in Turner I and II.^{54/} In upholding analog must carry, the Supreme Court in Turner II repeatedly emphasized that the preservation of localism and access to diverse programmers were the substantial interests sufficient to impose a burden on cable operator's constitutional rights, which are not relevant in the contest of digital must carry.

Quite probably, DTV channels will not carry local programming. Broadcasters will likely air programming such as major hit movies, pay-per-view, and major sports events; in essence the most lucrative programming available. Those programs only further a broadcaster's financial interests by creating new

^{53/} Turner II 117 S. Ct. at 1198.

^{54/} (1) preserving local broadcast television; (2) promoting the widespread dissemination of information from multiple sources; and (3) promoting fair competition. As discussed in section II(4)(b) herein, it is not a given that those interests are still relevant in today's programming marketplace.